



## **OFFICE OF PERSONNEL MANAGEMENT**

### **5 CFR Parts 315 and 335**

**RIN 3206-AN28**

#### **Appointment of Current and Former Land Management Employees**

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing final regulations to allow certain current and former employees of a land management agency to compete for a permanent position at such agency, when the agency is accepting applications from individuals within the agency's workforce under promotion and internal placement (i.e., merit promotion) procedures; or at any hiring agency when the agency is accepting applications from individuals outside its own workforce under merit promotion procedures. The intended effect of this hiring authority is to provide a pathway for current and former land management employees currently serving (or served) under time-limited appointments, who have not received a permanent appointment in the competitive service, to compete for vacant permanent Federal positions in the competitive service under merit promotion procedures.

**DATE:** This rule is effective [INSERT 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Michelle T. Glynn, (202) 606-1571, by TDD: 1-800-877-8339, or email: [michelle.glynn@opm.gov](mailto:michelle.glynn@opm.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

Under most circumstances, individuals who are serving (or served) under time-limited appointments are not eligible to compete under merit promotion procedures for permanent positions in the competitive service. Generally, positions filled under merit promotion procedures are only open to current career or career conditional employees to include certain

veterans who are eligible under the Veterans Employment Opportunities Act (VEOA) of 1998, as amended. Because time-limited employees are not career or career conditional employees, they may never be considered for permanent positions under merit promotion procedures. To remedy this situation, Congress enacted the Land Management Workforce Flexibility Act (“the Act”) under 5 U.S.C. 9601 and 9602 to better assist certain time-limited employees in Federal land management agencies to compete for vacant permanent positions in the competitive service under merit promotion procedures.

To implement the Act, OPM published proposed regulations in the *Federal Register* at 85 FR 29348 on May 15, 2020. Specifically, OPM proposed to allow certain current and former land management employees who are serving (or served) under time-limited appointments and have not received a permanent position in the Federal government to compete for permanent positions under merit promotion procedures in 5 CFR parts 316 and 335. After considering the comments received, OPM is finalizing the proposed amendments with modifications as discussed in the next section. OPM is also adopting several non-substantive modifications from the proposed to the regulatory text to improve clarity.

### **Comments on the Proposed Rule**

OPM received five comments on the proposed rule: four from individuals and one from a Federal employee union. One individual commented that the rule does not address whether a land management eligible with competitive status is subject to time-in-grade (TIG) restrictions when using this authority. The commenter also asked whether a land management eligible who already held a permanent job could use his or her eligibility multiple times when applying for positions under promotion and internal placement (i.e., merit promotion) procedures. The commenter suggested that OPM state clearly in the regulation whether these situations are allowed.

Agencies cannot use this authority to circumvent TIG requirements. TIG exists to prevent excessively rapid promotions in competitive service General Schedule positions and to

protect competitive principles. In accordance with 5 CFR 300.603, TIG applies to an individual who served on a non-temporary appointment within the 52-week period prior to advancement. Based on the scenario described above, the permanent employee, who was formerly a time-limited employee, would be subject to time-in-grade if seeking a higher-graded position. In accordance with 5 U.S.C. 9602, eligibility under these regulations applies to certain individuals serving, or who served, under a time-limited appointment and have not received a permanent position in the Federal government. OPM will address this and other scenarios pertaining to TIG requirements in supplemental guidance.

One individual expressed concern over the hiring practices at the Bureau of Land Management (BLM) and dissatisfaction with the current BLM leadership. This individual did not have any objections to or suggestions on the proposed regulation. OPM will not address this comment because it is beyond the scope of the proposed regulations.

Two individuals provided positive comments and expressed strong support for the proposed regulation. A retired National Park Ranger stated that he strongly supports the proposed regulation because it greatly benefits the National Park Service in the recruitment and retention of new and diverse employees. Another individual stated that this regulation will help temporary employees find full-time permanent employment and hiring managers to attract experienced workers. OPM appreciates this support.

One individual suggested that OPM amends the proposed rule to allow employees who previously served on a temporary appointment have that time credited toward the probationary or trial period. OPM is not adopting this suggestion because it is not necessary. The governing statute at 5 U.S.C. 9602(c)(2) states that individuals appointed under this authority acquire competitive status upon appointment. Competitive status is acquired after completion of a probationary period in accordance with 5 CFR 212.301. The statute deems a land management eligible who is selected to have completed a probationary period upon appointment under this authority. The proposed regulation at 5 CFR 315.613(d) states this.

The same individual suggested that OPM modifies proposed § 335.107 to make clear that a land management eligible may compete for a permanent position at any agency when the position is being filled under merit promotion procedures. OPM is not adopting this suggestion. The Act at 5 U.S.C. 9602 established the conditions and criteria under which certain current or former land management employees may compete for a permanent position under merit promotion procedures. The suggested language is not in accordance with this statute. The language in the proposed rule is consistent with the governing statute and reflects the conditions under which a land management employee may compete when a job is advertised under merit promotion procedures and open to candidates from outside an agency's workforce or under merit promotion procedures and open to candidates from within an agency's workforce.

A Federal employee union commented that its primary concern is to ensure the regulation and supplementary information reflect the statutory requirement that agencies must allow all land management eligibles to compete for vacancies filled under their merit promotion procedures. This Federal employee union submitted several specific comments that are discussed throughout the remainder of the Supplementary Information section of this preamble.

#### *Federal Employee Union Comments on the Supplementary Information of the Proposed Rule*

The employee union stated:

The primary thrust of the statute, as expressed in its first sentence, is to establish that a land management eligible “is *eligible* to compete (emphasis added).” [sic] It is therefore mandatory that agencies consider land management eligible applicants.

This is not reflected in the first sentence in the supplementary information under “Description of the Flexibility (p. 29349)” which states, in relevant part, “...an agency *may* use this authority to *allow* a current or former land management eligible... to compete for a permanent position...” (emphasis added). The term “may” gives agencies discretion to “allow” or to not allow land management eligibles to compete. In fact, the statute is prescriptive in this regard, in that it states that land management eligibles are “eligible to compete.” It is not within the authority of an agency to remove that which Congress has bestowed. We recommend this be revised to state “...*under this authority*, an agency *must* to allow [sic] a current or former land management eligible... to compete for a permanent position...” (emphasis in original.)

The employee union also asserted the sentence quoted above (“...an agency *may* use this authority to *allow* a current or former land management eligible... to compete for a permanent position...” (emphasis in original)) had to be “a simple drafting error” because in the same section the supplementary information stated: “an agency must consider a land management eligible (also under “Description of the Flexibility,” p. 29349).” Nevertheless, the presence of the first sentence remained “problematic as it introduces ambiguity that could lead to flawed implementation.”

OPM thanks the Federal employee union for the comment. No modification to the regulatory text is needed as it already reflects that agencies have the discretion whether to fill their positions under promotion and internal placement (i.e., merit promotion) procedures (5 CFR part 335) or through another hiring authority. OPM further notes that the difference in the sentences was not a drafting error, but rather reflect different points in the hiring process. OPM’s use of “must” in the second reference under “Description of the flexibility” modifies the phrase “consider a land management eligible. . .” It relates to when a land management eligible applies for a permanent position. That is, once an agency makes the determination to use its discretion to advertise for a permanent position under Promotion and Internal Placement procedures at 5 CFR 335, certain land management eligibles must be considered.

The employee union further objected to the phrase --“...*will be expected* to consider land management eligibles... (under “Land Management Workforce Flexibility Act, as Amended,” [sic] p. 29349)” in two places because that phrase did not create requirements and was not a term of art. In the alternative, the employee union again recommended revising the language “to clearly articulate the statutory requirement that agencies *must* to consider [sic] land management eligibles.”

OPM agrees and clarifies that agencies who use their discretion to hire for positions under proposed parts 315 and 335 must consider eligible land management applicants who apply for permanent positions.

The employee union recommended revising the language at § 335.107 to make it clear that land management eligibles are entitled to compete for permanent positions. It asserted “[t]he statement that they ‘may compete’ is not, in our view, sufficiently prescriptive in this regard.”

OPM does not believe this change is necessary because ‘may’ and ‘are entitled’ have the same meaning in this context. The law does not *require* individuals to compete, it allows them to, hence our use of “may.” Further, this formulation parallels language currently in § 335.106 pertaining to individuals eligible under the Veterans Employment Opportunities Act of 1998, as amended. We retained “may compete” for consistency in part 335.

The employee union further commented that the proposed § 335.107, “Special selection procedures for *certain* land management eligibles under merit promotion” (emphasis added) is problematic because it implies some but not all land management eligibles are eligible to compete for permanent positions. The employee union added “In fact, the section applies to *all* land management eligibles, as defined in the statute and in the proposed regulation, not only to certain ones . . . [and] could lead practitioners to wrongfully exclude subsets of land management eligibles.” The employee union recommended deleting the word “certain” from the heading.

OPM notes this section applies only to those land management employees who meet the eligibility requirements of the statute (i.e., current and former time-limited land management employees). OPM agrees, however, the original title may cause confusion by suggesting greater limitations beyond meeting the eligibility requirements. Consequently, OPM has revised the section heading for proposed § 335.107 to read, “§ 335.107. Special selection procedures for land management eligibles under merit promotion.”

The employee union further stated that § 335.107 should be revised to reflect that the section was not about selection procedures and the Act established an “entitlement to compete.”

Consequently, it recommended changing the heading to “Entitlement of land management eligibles to compete for permanent positions under merit promotion.”

OPM disagrees with this comment. This section is about selection procedures, as it encompasses eligibility for selection as well as how selected individuals will be appointed (i.e., given a career or career-conditional appointment in accordance with 5 CFR 315.613). This formulation parallels language currently in § 335.106 pertaining to individuals eligible under the Veterans Employment Opportunities Act of 1998, as amended. We retained “selection procedures” for consistency in part 335.

The employee union disagrees with the phrase “if otherwise qualified” in the regulatory language at § 335.107 and states the phrase suggests some but not all land management employees are eligible. The employee union further states that the statute and the proposed definition at § 315.613(b)(3) makes all land management employees eligible to compete for a permanent position and fears it could lead human resources specialists to wrongfully exclude subsets of eligible land management employees. The employee union recommends replacing “if otherwise qualified” with “if they properly apply and otherwise meet qualifications for the position.”

OPM is not adopting this suggestion. The phrase “if otherwise qualified” describes who may compete under merit promotion procedures in part 335 and entails more general considerations, such as whether an applicant meets the qualifications for the position being filled, satisfies any applicable time-in-grade requirements, etc.

The employee union also provided a list of additional recommended edits to the proposed language at § 335.107 as follows:

1. “There is a spurious close parenthesis in the parent phrase.”

OPM agrees and removed the extraneous parenthesis in § 335.107.

2. “As written, ‘compete’ is under (a) and therefore does not apply to (b), leaving that which a land management eligible may do under the circumstances described under (b) unspecified. ‘Compete’ should be the last word of the parent phrase, not the first word under (a).”

OPM agrees and has revised the text in § 335.107 to the following: “. . . may compete, if otherwise qualified:”

3. “As written, the phrase “in accordance with § 315.613” applies only to (b). It should apply to both (a) and (b) and therefore should be moved to the parent phrase.”

4. “As written, it is specified that a land management eligible selected to such a position is given a career or career-conditional appointment only in (b), but not in (a). This requirement exists for both.”

OPM agrees with both comments immediately above and has modified § 335.107(a) to include similar language to what appears in paragraph (b).

5. “As written, it is specified that a permanent position subject to the requirements of the statute are in the competitive service in (a), but not in (b). This requirement exists for both.”

OPM agrees and has revised the text by removing the reference to “in the competitive service” at § 335.107(a). The reference to the “competitive service” at § 335.107(a) is superfluous because, by definition, merit promotion procedures can only be used to fill positions in the competitive service. We also revised the text at § 335.107(b) to coincide. Further, the sentence added to § 315.613(a) based on earlier comments notes the types of appointments available, which also are only available in the competitive service.

6. “As written, the use of the conjunction ‘or’ at the end of (a) would mean a land management eligible could compete under (a) or under (b), but not both. In fact, a land management eligible is not precluded from, for example, applying for a position under (a) by virtue of having applied for one under (b). The appropriate conjunction for this circumstance is ‘and.’

OPM is not adopting the suggestion to replace “or” with “and” between § 335.107(a) and (b). OPM’s use of “or” conveys that a land management eligible may compete in either of two instances: if a job is advertised under merit promotion procedures outside the agency’s workforce, or if a job is advertised under merit promotion procedures within the agency’s workforce. The use of “and” may confuse readers to think a land management eligible may only apply when a job is advertised both ways.

7. “The statement ‘A land management eligible so selected will be given a career or career-conditional appointment’ does not go to the point of the section, the entitlement of



land management eligibles to compete for permanent positions. It is one of several aspects that relate to selection. As such, it is handled under the section dealing with these matters, at § 315.613(e). It is not needed here.

OPM notes that the employee union also commented above at #4 that this sentence only appeared in § 335.107(b) but also applied to § 335.107(a). OPM accepted the change requested at comment #4 and added the language to paragraph (a). However, OPM disagrees with comment #7. We believe describing the type of appointment a land management eligible may receive is appropriate under this section heading, as it is an aspect of selection. We note this reference to the type of appointment parallels language currently in § 335.106 pertaining to individuals eligible under the Veterans Employment Opportunities Act of 1998, as amended. We retained this formulation in proposed § 335.107 for consistency with part 335.

To effectuate these requested changes, the employee union recommended that OPM redraft § 335.107 as follows:

***§ 335.107. Entitlement of land management eligibles to compete for permanent positions under merit promotion***

*A current or former time-limited employee of a land management agency who is a land management eligible, as defined in § 315.613(b)(3), is entitled to compete in accordance with the provisions of § 315.613:*

*(a) for a permanent position in the competitive service at any agency (including, but not limited to, a land management agency) when that agency is accepting applications from individuals outside its own workforce under its merit promotion procedures; and*

*(b) for a permanent position in the competitive service at the land management agency at which they were most recently an employee when that agency is accepting applications from individuals within the agency's workforce under its merit promotion procedures.*

OPM responded to each bulleted issue individually above and is not adopting the recommended language in its entirety. As previously noted, we are making many of the recommended revisions to § 335.107 based on the concerns expressed by the employee union. OPM also notes that a former time-limited employee of a land management agency who is a land management eligible is considered “within the [land management] agency’s workforce” as long as the employee was most recently an employee of that agency (date of separation was not more

than 2 years prior to application), even if the time-limited appointment has ended. *See* 5 U.S.C. 9602(d).

## **Expected Impact of This Final Rule**

### *A. Statement of Need*

OPM is issuing this final rule to implement statutory changes that allow certain current and former time-limited employees of a land management agency to compete for permanent positions at a land management agency, when the agency is accepting applications from individuals within the agency's workforce under merit promotion procedures; or at any agency when the agency is accepting applications from individuals from outside its own workforce under merit promotion procedures. These changes are in response to the enactment of the Act, Pub. L. 114-47, 5 U.S.C. 9601 and 9602.

### *B. Impact*

This final rule provides a pathway for certain current and former land management employees currently serving (or who have served) under time-limited appointments at 5 CFR part 316 to compete for vacant permanent Federal positions in the competitive service under merit promotion procedures. Prior to enactment of the Act, these individuals competed for Federal jobs open to U.S. citizens through an open competitive process (unless the Land Management eligible had previously acquired competitive status). These employees now have statutory eligibility to compete under merit promotion procedures under certain circumstances. Thus, the law treats these individuals as if they had competitive status for purposes of applying for permanent Federal jobs advertised under an agency's merit promotion procedures. A potential impact may be that the demand for jobs advertised under these procedures could increase, as measured by an increase in the number of applicants vying for positions advertised under these procedures. This may result in longer processing times or "time to hire" periods than was previously the case.

Another potential impact could be on job-seeking veterans whose eligibility derives from the Veterans Employment Opportunities Act (VEOA) of 1998, as amended. The VEOA provides eligible veterans with the right to apply for positions advertised under merit promotion procedures when the hiring agency seeks applicants outside the hiring agency's workforce. Prior to enactment of the Act, VEOA eligible veterans were the only group with a statutory entitlement to compete for positions being filled by an agency from outside its own workforce under merit promotion procedures. In general, this may increase competition for these positions in general, and thus may reduce the chances of a VEOA eligible being selected for one of these positions.

Lastly, this rule could impact current employees of land management agencies serving in career-ladder positions. An employee in a career ladder position may be non-competitively promoted to the next highest grade-level, provided the next highest grade-level is within the career-ladder, the employee meets time-in-grade requirements, and is otherwise qualified for the duties at the next highest grade level. Because the Act extends eligibility to individuals outside the agency's or the Federal government's workforce, employees in career-ladder positions may now find themselves pitted against these external candidates.

OPM cannot quantify the size of these potential impacts (including the impact on VEOA eligible) because we have no way of knowing the volume or frequency with which land management eligibles may apply for a position under these rules.

### *C. Regulatory Alternatives*

There is no regulatory alternative to the final rule because OPM is required by the Act to implement the statute through regulations (see 5 U.S.C. 9602(e)).

### *D. Costs*

The costs associated with the final rule are minimal and include: the costs associated with the resources needed to process a potentially higher volume of job applicants for certain Federal jobs and the usual learning curve of implementing a regulatory change. To help minimize the latter cost, OPM intends to issue supplemental, explanatory guidance as well as provide technical

assistance upon request to any agency that may require such assistance. Because agency resources and the potential volume of increased job applicants vary, OPM cannot monetize the costs of these rules.

#### *E. Benefits*

The final rule will benefit certain employees and former employees of land management agencies and may benefit hiring agencies as well. These rules allow current and former time-limited employees of land management agencies who are otherwise ineligible (i.e., they have not acquired competitive status nor do they have reinstatement eligibility) to compete for permanent jobs under merit promotion procedures to do so. Time-limited employees are ineligible to compete for vacant permanent positions advertised under merit promotion procedures because, by definition, they do not acquire competitive status on the basis of the time-limited appointment. Generally, positions filled under merit promotion procedures are open to current or former career or career-conditional employees, certain veterans eligible under the VEOA and other individuals with special appointment eligibilities who are treated as if they have competitive status (i.e., former peace corps volunteers or certain military spouses). Because many agencies fill non-entry level positions using merit promotion procedures, qualified time-limited employees may never be considered for these positions under merit promotion procedures. To remedy this circumstance, Congress enacted the Act to provide a pathway for certain time-limited employees in Federal land management agencies to permanent positions. These provisions allow eligible current and former time-limited land management employees to compete for permanent positions in the competitive service under merit promotion procedures that previously were closed to them.

Hiring agencies may benefit from having an additional source of experienced land management employees to consider under their merit promotion procedures who otherwise may not have been within reach for selection when applying through the competitive examining process. This potential benefit must be balanced with the costs associated with processing a

potentially higher volume of job applicants (including longer time-to-hire processing times) under merit promotion procedures.

### **Regulatory Review**

OPM has examined the impact of this rule as required by Executive Orders 12866, 13563, and 14094, which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public, health, and safety effects, distributive impacts, and equity). This rule is considered a “significant regulatory action” under section 3(f) of Executive Order 12866.

### **Regulatory Flexibility Act**

The Director of OPM certifies that this rule will not have a significant economic impact on a substantial number of small entities because it applies only to Federal agencies and employees.

### **Federalism**

The Office of Personnel Management has examined this rulemaking in accordance with Executive Order 13132, Federalism, and have determined that this rulemaking will not have any negative impact on the rights, roles, and responsibilities of State, local, or tribal governments.

### **Civil Justice Reform**

This regulation meets the applicable standard set forth in Executive Order 12988.

### **Unfunded Mandates Reform Act of 1995**

This rulemaking will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

### **Congressional Review Act**

Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the Congressional Review Act) (5 U.S.C. 801 et seq.) requires rules (as defined in 5 U.S.C. 804) to be submitted to Congress before taking effect. OMB's Office of Information and Regulatory Affairs has determined this is not a major rule as defined by the Congressional Review Act (5 U.S.C. 804(2)).

### **Paperwork Reduction Act**

This rulemaking does not impose any reporting or record-keeping requirements subject to the Paperwork Reduction Act.

### **List of Subjects in 5 CFR Parts 315 and 335**

Government employees.

Office of Personnel Management.

**Kayyonne Marston,**

Federal Register Liaison.

Accordingly, OPM amends 5 CFR parts 315 and 335 as follows:

### **PART 315 – CAREER AND CAREER CONDITIONAL EMPLOYMENT**

1. The authority citation for part 315 is revised to read as follows:

**Authority:** 5 U.S.C. 1302, 3301, and 3302; E.O. 10577, 3 CFR, 1954-1958 Comp. p. 218, unless otherwise noted; and E.O. 13162. Secs. 315.601 and 315.609 also issued under 22 U.S.C. 3651 and 3652. Secs. 315.602 and 315.604 also issued under 5 U.S.C. 1104. Sec. 315.603 also issued under 5 U.S.C. 8151. Sec. 315.605 also issued under E.O. 12034, 3 CFR, 1978 Comp. p.111. Sec. 315.606 also issued under E.O. 11219, 3 CFR, 1964-1965 Comp. p. 303. Sec. 315.607 also issued under 22 U.S.C. 2560. Sec. 315.608 also issued under E.O. 12721, 3 CFR, 1990 Comp. p. 293. Sec. 315.610 also issued under 5 U.S.C. 3304(c). Sec.

315.611 also issued under 5 U.S.C. 3304(f). Sec. 315.612 also under E.O. 13473. Sec 315.613 also issued under Pub. L. 114-47, sec. 2(a) (Aug. 7, 2015), amended by Pub. L. 114-328, sec. 1135 (Dec. 23, 2016), as codified at 5 U.S.C. 9602. Sec. 315.708 also issued under E.O. 13318, 3 CFR, 2004 Comp. p. 265. Sec. 315.710 also issued under E.O. 12596, 3 CFR, 1978 Comp. p. 264.

## **Subpart F – Career or Career Conditional Appointment Under Special Authorities**

2. Add § 315.613 to subpart F to read as follows:

### **§ 315.613 Appointment of current and former land management eligibles serving under time-limited appointments.**

(a) *Appointment of land management eligibles.* (1) Any agency –

(i) May appoint a land management eligible who is a current time-limited employee of a land management agency to a permanent position provided the land management eligible was selected from among the best qualified following competition under a merit promotion announcement open to candidates outside of the hiring agency’s workforce; and

(ii) May appoint a land management eligible who is a former time-limited employee of a land management agency to a permanent position provided:

(A) The land management eligible applied for that position within the 2-year period following the most recent date of separation from a land management agency; and

(B) Was selected from among the best qualified following competition under a merit promotion announcement open to candidates outside of the hiring agency’s workforce.

(2) In addition, a land management agency--

(i) May appoint a land management eligible who is a current time-limited employee of that agency to a permanent position provided the land management eligible was selected from among the best qualified following competition under a merit promotion announcement open to candidates within that agency’s workforce; and

(ii) May appoint a land management eligible who is a former time-limited employee of that land management agency to a permanent position provided:

(A) The land management eligible applied for that position within the 2-year period following the most recent date of separation from a land management agency;

(B) The land management agency from which the land management eligible most recently separated is the same land management agency as the one making the appointment; and

(C) The land management eligible was selected from among the best qualified following competition under a merit promotion announcement open to candidates within that agency's workforce.

(b) *Definitions*—(1) *Agency* has the meaning given in 5 U.S.C. 105, and may also mean a major subdivision or component of an entity defined in 5 U.S.C. 105.

(2) *Land management agency* means any of the following:

(i) The Forest Service of the U.S. Department of Agriculture;

(ii) The Bureau of Land Management of the U.S. Department of the Interior;

(iii) The National Park Service of the U.S. Department of the Interior;

(iv) The Fish and Wildlife Service of the U.S. Department of the Interior;

(v) The Bureau of Indian Affairs of the U.S. Department of the Interior; and

(vi) The Bureau of Reclamation of the U.S. Department of the Interior.

(3) *Land management eligible* means either:

(i) An individual currently serving in a land management agency who:



(A) Initially was hired under competitive procedures, for a time-limited appointment in the competitive service in accordance with part 316, and has not received a permanent appointment;

(B) Has served under one or more time-limited appointments by a land management agency for a period or periods totaling more than 24 months without a break in service of 2 or more years; and

(C) Has performed at an acceptable level during each period of service; or

(ii) An individual who previously served in a land management agency who:

(A) Initially was hired under a time-limited appointment under competitive procedures in the competitive service in accordance with part 316, and did not receive a permanent appointment before leaving Federal service;

(B) Served under one or more time-limited appointments by a land management agency for a total period of more than 24 months without a break in service of 2 or more years;

(C) Performed at an acceptable level throughout the service period(s);

(D) Applied for a position covered by these provisions within 2 years after the individual's most recent date of separation from a land management agency; and

(E) With respect to the individual's most recent separation, for reasons other than misconduct or performance. For these purposes, an individual under this paragraph is deemed a time-limited employee of the land management agency from which the individual was most recently separated.

(4) *Time-limited appointment* means a temporary or term appointment, in accordance with 5 CFR part 316.

(c) *Conditions.* An agency is expected to consider the application of a land management eligible; and must waive any age requirement unless it can prove that the requirement is essential to the performance of the duties of the position.

(d) *Acquisition of competitive status.* A person appointed under paragraph (a) of this section acquires competitive status automatically upon appointment.

(e) *Tenure on appointment.* An appointment under paragraph (a) of this section is career-conditional unless the appointee has already satisfied the requirements for career tenure or is exempted from the service requirement pursuant to § 315.201.

## **PART 335 – PROMOTION AND INTERNAL PLACEMENT**

3. The authority citation for part 335 is revised to read as follows:

**Authority:** 5 U.S.C. 3301, 3302, 3330; E.O. 10577, 3 CFR 1954-1958 Comp., p. 218; 5 U.S.C. 3304(f); Pub. L. 106-117; Pub. L. 114-47, sec. 2(a) (Aug. 7, 2015), as amended by Pub. L. 114-328, sec. 1135 (Dec. 23, 2016), codified at 5 U.S.C. 9602.

### **Subpart A—General Provisions**

4. Add § 335.107 to subpart A to read as follows:

#### **§ 335.107 Special selection procedures for land management eligibles under merit promotion.**

A current or former land management employee of a land management agency, who is a land management eligible, as defined in § 315.613(b)(3) of this chapter, may compete, if otherwise qualified for:

(a) A permanent position at any agency (including, but not limited to, a land management agency), in accordance with the provisions of § 315.613 of this chapter, when that agency is accepting applications from individuals outside its own workforce under merit promotion procedures. A land management eligible so selected will be given a career or career-conditional appointment under § 315.613; or

(b) A permanent position at the land management agency with which the individual was most recently an employee, in accordance with the provisions of § 315.613 of this chapter, when the agency is accepting applications from individuals within the agency's workforce under its

merit promotion procedures. A land management eligible so selected will be given a career or career-conditional appointment under § 315.613.

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